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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/051,881	01/18/2002	Albert E. Johnson	4500-7 (04500.0012.6)	7900
26158	7590	12/23/2005	EXAMINER	
WOMBLE CARLYLE SANDRIDGE & RICE, PLLC			BOYD, JENNIFER A	
P.O. BOX 7037			ART UNIT	
ATLANTA, GA 30357-0037			PAPER NUMBER	

1771

DATE MAILED: 12/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/051,881

Applicant(s)

JOHNSON ET AL.

Examiner

Jennifer A. Boyd

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 20 October 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/20/2005 has been entered. The Applicant's Amendments and Accompanying Remarks, filed 10/20/2005, have been entered and have been carefully considered. Claim 1 has been amended and claims 1 – 13 are pending. In view of Applicant's amendments to claim 1, the Examiner withdraws all previously set forth rejections as detailed in the Office Action dated 5/20/2005. Despite these advances, the invention as currently claimed is not found to be patentable for reasons herein below.

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Claim Rejections - 35 USC § 103***

3. Claims 1 – 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corry (US 2,942,327) in view of Gatto (US 6,539,898).

Corry is directed to a coated fabric (Title) suitable for convertible automobile tops (column 3, lines 15 – 25).

Corry teaches a composite comprising a particular fabric, or “outer fabric layer”, in a particular spatial relationship with a second fabric, or “inner fabric layer”, which can be the same or different, and a flexible sheet material, or “adhesive waterproofing layer”, disposed between the two fabrics and adhered to adjacent surfaces of each (column 3, lines 45 – 55). See Figures 4 and 5. The fabrics can comprise filament yarns of polyester, polyamide, or the like (column 3, lines 1 – 5). The film or flexible sheet material can comprise polyvinyl chloride (column 2, lines 45 – 55), which is known in the art to be waterproof. Corry teaches that the warp or weft yarn can comprise 100 denier nylon (column 4, lines 25 – 60) meeting the denier of the core yarn set forth by claim 5.

Corry teaches the claimed invention above but fails to teach that the “outer woven fabric layer” is formed of at least 25% by weight polymeric coated yarns as required by claim 1. Corry fails to teach that the “outer fabric layer”, can comprise a woven material containing a core yarn covered by an extruded polymeric sheath as required by claim 2. Corry fails to teach that the coating is polyvinyl chloride and the core yarn is polyester as required by claims 3 – 4 and 6 - 7. Corry fails to teach that the denier of the coated yarn ranges from 500 – 3500 as required by claim 8.

Gatto is directed to protective covers for animals such as blankets and turnout tugs for horses (column 1, lines 10 – 15). Gatto teaches a multilayered blanket (see Figure 2) comprising an *outer layer of mesh material* 48 (column 4, lines 60 – 68 and column 5, lines 1 – 15). Gatto teaches that the *mesh material*, equated to Applicant’s “outer woven fabric layer”, comprises a

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woven fabric manufactured with an *inner fiber* 70 coated with an *outer sheath* of polyvinyl chloride 72 (see Figure 4 and column 3, lines 55 – 61). It should be noted that the woven fabric is consisting of coated yarns thus meeting Applicant's requirement of 25% by weight of polymeric coated yarns. Gatto notes that the coated fiber material is lightweight, high in strength and flexibility. The PVC coating provides temperature stability and resistance to color fade, abrasion, flame and mildew (Abstract). Gatto notes that these properties are very useful in material utilized as a protective layer for an animal cover or garment used outdoors (column 3, lines 1 – 3). In a preferred embodiment, the *inner fiber* is a high strength polyester fiber (column 4, lines 1 – 4). Gatto teaches that *outer layer of mesh material* has a yarn denier of 1000 to 2000 (column 4, lines 55 – 60).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the polyester fibers which are extrusion-coated with a sheath of polyvinyl chloride as suggested by Gatto as the fibers in the "outer fabric layer" of Corry motivated by the desire to create a car cover having an outer material which is lightweight, high in strength, flexibility and heat stability and exhibits resistance to color fade, abrasion, flame and mildew.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use yarns having a coated yarn size between 500 – 3500 as suggested by Gatto in the invention of Corry motivated by the desire to create a car cover which is high in strength and flexible.

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4. Claims 9 – 10 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corry (US 2,942,327) in view of Gatto (US 6,539,898) as applied above, further in view of Druckman et al. (US 4,996,100).

Corry in view of Gatto teaches the claimed invention above but fails to disclose that the “outer woven layer”, can also include effect yarns selected from the group of acrylics, modacrylics, polypropylene, polyethylene and polyester as required by claim 9. Corry in view of Gatto fails to teach that the coated yarn content is at least 50% as required by claim 10. Corry in view of Gatto fails to teach that the coated yarn is introduced in both the warp and fill in a pattern alternating with effect yarns as required by claim 13.

Druckman is directed to improved fabrics suitable for use outside exposed to environmental elements (column 1, lines 1 – 8). Druckman teaches the alternating of vinyl and soft fabrics yarns in the warp direction and filling direction of a woven fabric (Abstract). Druckman notes that the resulting fabric has the durability characteristics of the vinyl while possessing soft characteristics provided by the soft fabric yarns (Abstract). Druckman teaches that suitable soft fibers may be modacrylics, acrylics, polypropylene, polyethylene and polyesters (column 2, lines 35 – 37). By examining Figure 2, it is shown that the majority of the yarns in the woven fabric are vinyl yarns rather than the soft yarns.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the effect yarns of Druckman in an alternating fashion as suggested by Druckman in the composite of Corry in view of Gatto motivated the desire to create a fabric with high durability provided by the vinyl yarns and soft characteristics provided by the effect yarns in addition to creating an aesthetically pleasing fabric.

5. Claims 9 and 11 – 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corry (US 2,942,327) in view of Gatto (US 6,539,898) as applied above, further in view of Swers et al. (US 6,557,590).

Corry in view of Gatto teaches the claimed invention above but fails to disclose that the “woven layer” can also include effect yarns selected from the group of acrylics, modacrylics, polypropylene, polyethylene and polyester as required by claims 9 and 11. Corry in view of Gatto fails to teach that the coated yarn is introduced in the fill alone as required by claim 12.

Swers directed to fabrics that are used for outdoor applications such as outdoor cushion upholstery, tents, awnings and marine applications (column 1, lines 24 – 33). Swers teaches that the fabric comprises a woven structure formed of warp effect yarns and self-coating yarns formed of high melt and low melt yarn constituents in at least part or all of the fill (column 1, lines 10 – 22). Therefore, in one embodiment, Swers teaches that the woven structure can comprise warp effect yarns in the warp direction and only self-coating yarns in the fill direction.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to use the effect yarns in the pattern as suggested by Swers in the mesh fabric of Corry in view of Gatto motivated the desire to create a fabric with abrasion resistance, load/elongation recovery, firm hand and weave stability while having an aesthetically pleasing looking.

As to claim 11, Corry in view of Gatto and Swers discloses the claimed invention except for that the coated yarn is introduced in the warp alone. It would have been obvious to one having ordinary skill in the art at the time the invention was made to create a fabric with coated

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yarn introduced in just the warp alone, since it has been held to be within the general skill of a worker in the art to select a pattern of yarns on the basis of its suitability for the intended use as a matter of design choice.

### ***Response to Arguments***

6. Applicant's arguments filed October 20, 2005 have been fully considered but they are not persuasive.

In response to applicant's argument that Gatto is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, Gatto is reasonably pertinent to the particular problem with which the applicant was concerned, in particular heat stability and resistance to color fade, abrasion, flame and mildew. Therefore, although Gatto is directed to a horse blanket, Gatto is still considered to be analogous art. Furthermore, Gatto provides motivation to incorporate extrusion-coated yarns in a covering for use in outdoor applications, such as the convertible top of the newly applied reference above.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jennifer A. Boyd whose telephone number is 571-272-1473. The examiner can normally be reached on Monday thru Friday (8:30am - 6:00pm).




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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jennifer Boyd  
December 19, 2005

  
**Ula C. Ruddock**  
Primary Examiner  
Tech Center 1700